

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HEATHER F. LUKASHIN & IGOR)
LUKASHIN,)
Plaintiffs,) No. 3:12-CV-5932 RBL
v.) ORDER GRANTING
SUTTELL & HAMMER, P.S., NICHOLAS R.) DEFENDANTS' MOTION TO
FILER and MALISA L. GURULE) DISMISS PURSUANT TO
Defendants.) F.R.CIV.P 12(B)(1) AND 12(B)(6)

This matter is before the Court on Defendants' Motion To Dismiss Pursuant To Fed. R. Civ. P 12(b)(1) and 12(b)(6) [Dkt#10], and on Plaintiff's Motion for Sanctions [Dkt. #17]. The Court has considered all of the parties' submittals. The dispute requires neither oral argument nor a detailed opinion.

The record includes filings in *Capital One Bank (USA), N.A. v. Heather F. Lukashin*, No. 10-2-02299-3 (Thurston County Superior Court) reflecting matters of public record that are properly considered as part of a motion brought pursuant to F.R.Civ.P. 12. The Motion to dismiss is GRANTED for the reasons articulated in the Motion.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS (12-cv-5932 RBL) — 1**

1 To the extent plaintiffs' claims are based on the procedure, argument or evidence
2 presented to the superior court in connection with summary judgment proceedings there,
3 plaintiffs' claims constitute a collateral attack on, and a *de facto* appeal from, the judgment
4 entered in the State Court Action. This Court lacks subject matter jurisdiction to entertain such
5 a claim under *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia*
6 *Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Plaintiffs' claims concerning the
7 procedure, argument and evidence presented on summary judgment are thus dismissed pursuant
8 to F.R.Civ.P 12(b)(1).

9 Additionally, and in the alternative, the Plaintiffs have failed to plead facts sufficient to
10 state a claim against each of the defendants under the Fair Debt Collection Practices Act the
11 Washington Collection Agency Act, or the Washington Consumer Protection Act.

12 Plaintiffs' allegations do not present a case of material deception; there are no factual
13 allegations of a debt within the meaning of the FDCPA; the Complaint does not make any
14 meaningful allegations against Mr. Filer or Ms. Gurule; Suttell was not a "collection agency" at
15 the time of the allegations; plaintiffs' state law claims (which are necessarily brought under the
16 CPA) may not be based on the defendants' legal work for their client; and there is no allegation
17 of harm to business or property.

The Motion to dismiss is GRANTED, and this matter is DISMISSED WITH PREJUDICE. Plaintiff's Motion for Sanctions is DENIED.

IT IS SO ORDERED.

DATED this 28th day of March, 2013.

Ronald B. Leighton

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE